

Senate Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

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First Regular Session  
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CHAPTER 69

## **SENATE BILL 1285**

AN ACT

AMENDING SECTION 8-807, ARIZONA REVISED STATUTES; RELATING TO PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-807, Arizona Revised Statutes, is amended to  
3 read:

4 8-807. CPS information; public record; use; confidentiality;  
5 violation; classification; definitions

6 A. CPS information shall be maintained by the department as required  
7 by federal law as a condition of the allocation of federal monies to this  
8 state. All exceptions for the public release of CPS information shall be  
9 construed as openly as possible under federal law.

10 B. The department, or a person who receives CPS information pursuant  
11 to this subsection, shall provide CPS information to a federal agency, a  
12 state agency, a tribal agency, a county or municipal agency, a law  
13 enforcement agency, a prosecutor, an attorney or a guardian ad litem  
14 representing a child victim of crime pursuant to article II, section 2.1,  
15 Constitution of Arizona, a school, a community service provider, a contract  
16 service provider or any other person that is providing services pursuant to  
17 this chapter:

18 1. To meet its duties to provide for the safety, permanency and  
19 well-being of a child, provide services to a parent, guardian or custodian or  
20 provide services to family members to strengthen the family pursuant to this  
21 chapter.

22 2. To enforce or prosecute any violation involving child abuse or  
23 neglect.

24 3. To provide information to a defendant after a criminal charge has  
25 been filed as required by an order of the criminal court.

26 C. The department shall disclose CPS information to a court, a party  
27 in a dependency or termination of parental rights proceeding or the party's  
28 attorney, the foster care review board or a court appointed special advocate  
29 for the purposes of and as prescribed in this title.

30 D. The department shall disclose CPS information to a domestic  
31 relations, family or conciliation court if the CPS information is necessary  
32 to promote the safety and well-being of children. The court shall notify the  
33 parties that it has received the CPS information.

34 E. A person or agent of a person who is the subject of CPS information  
35 shall have access to CPS information concerning that person.

36 F. The department:

37 1. May provide CPS information to confirm, clarify or correct  
38 information concerning an allegation or actual instance of child abuse or  
39 neglect that has been made public by sources outside the department.

40 2. Shall promptly provide CPS information to the public regarding a  
41 case of child abuse, abandonment or neglect that has resulted in a fatality  
42 or near fatality as follows:

1 (a) The department shall provide preliminary information including:  
2 (i) The name, age and city, town or general location of residence of  
3 the child who has suffered a near fatality or fatality.  
4 (ii) The fact that a child suffered a near fatality or fatality as the  
5 result of abuse, abandonment or neglect.  
6 (iii) The name, age and city, town or general location of residence of  
7 the alleged perpetrator, if available.  
8 (iv) Whether there have been reports, or any current or past cases, of  
9 child abuse, abandonment or neglect involving the child and the current  
10 alleged abusive or neglectful parent, guardian or custodian.  
11 (v) Actions taken by child protective services in response to the  
12 fatality or near fatality of the child.  
13 (b) On request by any person, the department shall promptly provide  
14 additional CPS information to the requestor. Before releasing additional CPS  
15 information, the department shall promptly notify the county attorney of any  
16 decision to release that information, and the county attorney shall promptly  
17 inform the department if it believes the release would cause a specific,  
18 material harm to a criminal investigation. After consulting with the county  
19 attorney, pursuant to subdivision (c) of this paragraph, the department shall  
20 produce to the requestor as much additional CPS information as promptly as  
21 possible about a case of child abuse, abandonment or neglect that resulted in  
22 a fatality or near fatality.  
23 (c) On request, the department shall continue to provide CPS  
24 information promptly to the public about a fatality or near fatality unless:  
25 (i) After consultation with the county attorney, the county attorney  
26 demonstrates that release of particular CPS information would cause a  
27 specific, material harm to a criminal investigation.  
28 (ii) The release would violate subsection A or K of this section or  
29 the privacy of victims of crime pursuant to article II, section 2.1,  
30 subsection C, Constitution of Arizona.  
31 (d) If any person believes that the county attorney has failed to  
32 demonstrate that release would cause a specific, material harm to a criminal  
33 investigation, that person may file an action in superior court pursuant to  
34 title 39, CHAPTER 1, article 2, and subsection I of this section and request  
35 the court to review the CPS information in camera and order disclosure.  
36 3. May provide CPS information to a person who is conducting bona fide  
37 research, the results of which might provide CPS information that is  
38 beneficial in improving child protective services.  
39 4. May provide access to CPS information to the parent, guardian or  
40 custodian of a child if the CPS information is reasonably necessary to  
41 promote the safety, permanency and well-being of the child.  
42 G. Access to CPS information in the central registry shall be provided  
43 as prescribed in section 8-804.  
44 H. To provide oversight of child protective services, the department  
45 shall provide access to CPS information to the following persons, if the CPS

1 information is reasonably necessary for the person to perform the person's  
2 official duties:

3 1. Federal or state auditors.

4 2. Persons conducting any accreditation deemed necessary by the  
5 department.

6 3. A standing committee of the legislature or a committee appointed by  
7 the president of the senate or the speaker of the house of representatives  
8 for purposes of conducting investigations related to the legislative  
9 oversight of the department of economic security. This information shall not  
10 be further disclosed unless a court has ordered the disclosure of this  
11 information, the information has been disclosed in a public or court record,  
12 or the information has been disclosed in the course of a public meeting or  
13 court proceeding.

14 4. A legislator who requests CPS information in the regular course of  
15 the legislator's duties. This information shall not be further disclosed  
16 unless a court has ordered the disclosure of this information, the  
17 information has been disclosed in a public or court record, or the  
18 information has been disclosed in the course of a public meeting or court  
19 proceeding. To request a file pursuant to this paragraph:

20 (a) The legislator shall submit a written request for CPS information  
21 to the presiding officer of the body of which the state legislator is a  
22 member. The request shall state the name of the person whose case file is to  
23 be reviewed and any other information that will assist the department in  
24 locating the file.

25 (b) The presiding officer shall forward the request to the department  
26 within five working days of the receipt of the request.

27 (c) The department shall make the necessary arrangements for the  
28 legislator to review the file at an office of the department, chosen by the  
29 legislator, within ten working days.

30 (d) The legislator shall sign a form, consistent with the requirements  
31 of this paragraph and paragraph 3 of this subsection, before reviewing the  
32 file, that outlines the confidentiality laws governing child protective  
33 services files and penalties for further release of the information.

34 5. A citizen review panel as prescribed by federal law, a child  
35 fatality review team as provided in title 36, chapter 35 and the office of  
36 ~~ombudsman-citizen's~~ OMBUDSMAN-CITIZENS aide.

37 I. A person who has been denied CPS information regarding a fatality  
38 or near fatality caused by abuse, abandonment or neglect pursuant to  
39 subsection F, paragraph 2 or subsection K of this section may bring a special  
40 action pursuant to section 39-121.02 in the superior court to order the  
41 department to release that CPS information. A LEGISLATOR HAS STANDING TO  
42 BRING OR TO JOIN A SPECIAL ACTION REGARDING THE RELEASE OF CPS INFORMATION OR  
43 TO CHALLENGE THE REDACTION OF RELEASED CPS INFORMATION. The plaintiff shall  
44 provide notice to the county attorney, who has standing and may participate  
45 in the action. The court shall review the requested records in camera and

1 order disclosure consistent with subsection A, subsection F, paragraph 2 and  
2 subsection K of this section. The court shall take reasonable steps to  
3 prevent any clearly unwarranted invasions of privacy and protect the privacy  
4 and dignity of victims of crime pursuant to article II, section 2.1,  
5 subsection C, Constitution of Arizona.

6 J. The department or a person who is not specifically authorized by  
7 this section to obtain CPS information may petition a judge of the superior  
8 court to order the department to release CPS information. The plaintiff  
9 shall provide notice to the county attorney, who has standing and may  
10 participate in the action. The court shall review the requested records in  
11 camera and shall balance the rights of the parties who are entitled to  
12 confidentiality pursuant to this section against the rights of the parties  
13 who are seeking the release of the CPS information. The court may release  
14 otherwise confidential CPS information only if the rights of the parties  
15 seeking the CPS information and any benefits from releasing the CPS  
16 information outweigh the rights of the parties who are entitled to  
17 confidentiality and any harm that may result from releasing the CPS  
18 information. The court shall take reasonable steps to prevent any clearly  
19 unwarranted invasions of privacy and protect the privacy and dignity of  
20 victims of crime pursuant to article II, section 2.1, subsection C,  
21 Constitution of Arizona.

22 K. Except as provided in subsection L of this section, before it  
23 releases records under this section, the department shall take whatever  
24 precautions it determines are reasonably necessary to protect the identity  
25 and safety of a person who reports child abuse or neglect and to protect any  
26 other person if the department believes that disclosure of the CPS  
27 information would be likely to endanger the life or safety of any person.  
28 The department is not required by this section to disclose CPS information if  
29 the department demonstrates that disclosure would cause a specific, material  
30 harm to a child protective services investigation. The department is not  
31 required by this section to disclose CPS information if, in consultation with  
32 the county attorney, the county attorney demonstrates that disclosure would  
33 cause a specific, material harm to a criminal investigation.

34 L. A person who is the subject of an unfounded report or complaint  
35 made pursuant to this chapter and who believes that the report or complaint  
36 was made in bad faith or with malicious intent may petition a judge of the  
37 superior court to order the department to release the CPS information. The  
38 petition shall specifically set forth reasons supporting the person's belief  
39 that the report or complaint was made in bad faith or with malicious intent.  
40 The court shall review the CPS information in camera and the person filing  
41 the petition shall be allowed to present evidence in support of the petition.  
42 If the court determines that there is a reasonable question of fact as to  
43 whether the report or complaint was made in bad faith or with malicious  
44 intent and that disclosure of the identity of the person making the report or  
45 complaint would not be likely to endanger the life or safety of the person

1 making the report or complaint, it shall provide a copy of the CPS  
2 information to the person filing the petition and the original CPS  
3 information is subject to discovery in a subsequent civil action regarding  
4 the making of the report or complaint.

5 M. The department shall provide the person who conducts a forensic  
6 medical evaluation with any records the person requests, including social  
7 history and family history regarding the child, the child's siblings and the  
8 child's parents or guardians.

9 N. The department shall provide CPS information on request to a  
10 prospective adoptive parent, foster parent or guardian, if the information  
11 concerns a child the prospective adoptive parent, foster parent or guardian  
12 seeks to adopt or provide care for.

13 O. If the department receives information that is confidential by law,  
14 the department shall maintain the confidentiality of the information as  
15 prescribed in the applicable law.

16 P. A person may authorize the release of CPS information about the  
17 person but may not waive the confidentiality of CPS information concerning  
18 any other person.

19 Q. The department may provide a summary of the outcome of a child  
20 protective services investigation to the person who reported the suspected  
21 child abuse or neglect.

22 R. The department shall adopt rules to facilitate the accessibility of  
23 CPS information.

24 S. The department may charge a fee for copying costs required to  
25 prepare CPS information for release pursuant to this section.

26 T. A person who violates this section is guilty of a class 2  
27 misdemeanor.

28 U. For the purposes of this section:

29 1. "CPS information" includes all information the department gathers  
30 during the course of a child protective services investigation conducted  
31 under this chapter from the time a file is opened and until it is closed.  
32 CPS information does not include information that is contained in child  
33 welfare agency licensing records.

34 2. "Near fatality" means an act that, as certified by a physician,  
35 places a child in serious or critical condition.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.